

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

PHISH, INC., a Delaware corporation,

Plaintiff,

VARIOUS JOHN DOES, JANE DOES, AND
ABC COMPANIES,

Defendants.

Case No. 2:23-cv-00547-JHC

**AMENDED PRELIMINARY
INJUNCTION AND SEIZURE ORDER;**

Plaintiff, Phish Inc. (“Plaintiff”), having applied *ex parte* against unknown individuals
entities (collectively, “Defendants”) for a temporary restraining order, order permitting civil
e, and preliminary injunction, pursuant to Federal Rule of Civil Procedure 65 and the
m Act (15 U.S.C. §1051, et seq.), as amended by the Trademark Counterfeiting Act of
Public Law 98-473 (the “Lanham Act”), for the reason that Defendants are and will be
facturing, distributing, offering for sale and selling goods bearing counterfeit reproductions
marks owned and controlled by Plaintiff (“Counterfeit Merchandise”), and the Court
g previously issued a temporary restraining order and preliminary injunction permitting
eizure based on the pleadings in the case, and having reviewed the declarations of Kevin
ro, Jeffrey L. Laytin, and Andrew R. Escobar and the exhibits thereto, the Court finds:

1 1) Defendants' manufacture, import, distribution, offer for sale and/or sale of
2 Counterfeit Merchandise has caused, and if not stopped will continue to cause, immediate and
3 irreparable injury to Plaintiff;

4 2) Plaintiff has demonstrated evidence of the offer for sale of counterfeit and/or
5 unauthorized merchandise in connection with the 2023 Phish Tour, and is therefore, likely to
6 succeed in showing Defendants have used and are continuing to use counterfeit and/or
7 unauthorized and infringing copies of Plaintiff's federally registered trademarks and unregistered
8 trademarks, names and likenesses set forth below in connection with the manufacture, import,
9 distribution, offer for sale and/or sale of Counterfeit Merchandise on the 2023 Phish Tour;

10 3) Plaintiff has also shown sufficiently serious questions going to the merits of its
11 claims to make them a fair ground for litigation, and that the harm to Plaintiff from denial of the
12 requested *ex parte* order would outweigh the harm to Defendants' legitimate interests in the
13 event such an order were granted, and that a preliminary injunction would serve the public
14 interest;

15 4) Defendants, or other persons acting in concert with Defendants, would likely
16 destroy, move, hide or otherwise make inaccessible to the Court Defendants' Counterfeit
17 Merchandise, any business records related thereto, and the profits derived therefrom, absent an
18 *ex parte* order, thereby denying Plaintiff access to relevant evidence and frustrating the ultimate
19 relief Plaintiff seeks in this action;

20 5) Plaintiff has demonstrated the location(s) at which Defendants are or will be
21 distributing, offering for sale and/or selling Counterfeit Merchandise; and

22 6) Entry of an order other than a preliminary injunction and seizure order would not
23 adequately achieve the purposes of the Lanham Act to preserve Plaintiff's remedies for
24 trademark counterfeiting, including, *inter alia*, the removal of Counterfeit Merchandise from the
25 marketplace and destruction of same, and an award to Plaintiff of lost profits or damages.

1 Therefore, IT IS HEREBY ORDERED that Defendants, various John Does, Jane Does
2 and ABC Companies, their true identities being unknown, are hereby preliminarily enjoined
3 from manufacturing, distributing, offering or holding for sale, or selling the Counterfeit
4 Merchandise, consisting of any clothing, jewelry, photographs, posters, recordings and other
5 merchandise bearing the trademarks, service marks, likenesses, images, trade names or logos, or
6 any colorable imitations thereof of the musical group known as PHISH and each of its individual
7 members TREY ANASTASIO, MIKE GORDON, JON FISHMAN, and PAGE MCCONNELL
8 and their federally registered marks: PHISH FOOD, U.S. Registration Number 2173816; PHISH,
9 U.S. Reg. No. 2096010; PHISH, U.S. Reg. No. 2029049; PHISH, U.S. Reg. No. 2029048;
10 PHISH, U.S. Reg. No. 1917861; PHISH, U.S. Reg. No. 1782981; and PHISH and Design, U.S.
11 Reg. No. 1930480; OYSTERHEAD, U.S. Reg. No. 2662635; GAMEHENDGE, U.S. Reg. No.
12 2048310; GAMEHENDGE, U.S. Reg. No. 2053513 and WATERWHEEL, U.S. Reg. No.
13 2247438; and their unregistered mark VIDA BLUE (collectively, the “Plaintiff’s Marks”).

14 AND IT APPEARING TO THE COURT that Defendants are likely and about to sell and
15 distribute the Counterfeit Merchandise bearing the Plaintiff’s Marks during the remaining shows
16 of the 2023 Phish Tour and will carry out such acts during the entirety of the 2023 Phish Tour set
17 forth below, unless enjoined by order of the Court,

18 IT IS FURTHER ORDERED that pending hearing and determination of this application,
19 the Defendants, their agents, servants, employees, attorneys, successors and assigns and all
20 persons, firms and corporations acting in concert with them, and each of them be and hereby are
21 preliminarily enjoined restrained from manufacturing, distributing, offering or holding for sale,
22 advertising and/or selling Counterfeit Merchandise bearing any of the Plaintiff’s Marks;

23 AND IT IS FURTHER ORDERED that the United States Marshal or other federal, state
24 or local law enforcement officers, or off-duty officers located within each district in which
25 Plaintiff enforces this order, assisted by one or more attorneys or agents of Plaintiff, are hereby
26 authorized to seize and impound any and all Counterfeit Merchandise which Defendants sell,

1 offer for sale or are holding for sale, including from any bag, carton, container, vehicle, or other
 2 means of carriage in which the Counterfeit Merchandise is found from ten (10) hours before to
 3 six (6) hours after any performance by Phish within a twenty (20) mile vicinity of the venues at
 4 which Phish shall be performing, including, but not limited to, the following current venues and
 5 dates of the 2023 Phish Tour:

DATE	VENUE
October 6–8, 2023	• Bridgestone Arena, Nashville, TN
October 10–11, 2023	• Wright State University Nutter Center, Dayton, Ohio
October 13–15, 2023	• United Center, Chicago, Illinois
December 28–31, 2023	• Madison Square Garden, New York, New York

10 AND IT IS FURTHER ORDERED that this order be and is hereby conditioned upon
 11 Plaintiff's maintaining with the Clerk of this Court its undertaking in the form of a bond now on
 12 file in the amount of \$10,000 to secure payment of such costs and damages not to exceed such
 13 sum as may be suffered or sustained by any party who is found to be wrongfully enjoined
 14 hereby;

15 AND IT IS FURTHER ORDERED that service of a copy of this order to show cause
 16 together with the summons and complaint in this action be made upon the Defendants by the
 17 United States Marshal, other federal, state or local law enforcement officers or by any person
 18 over the age of eighteen (18) years not a party to this action selected for that purpose by the
 19 Plaintiff, at the time the seizure provided herein is effected and that such service shall be deemed
 20 good and sufficient, provided that a complete set of all moving papers submitted in support of
 21 this order shall be promptly provided to any defendant or counsel requesting same;

22 AND IT IS FURTHER ORDERED that the process server shall offer a receipt to each
 23 person from whom Counterfeit Merchandise is seized and that the Plaintiff shall be deemed
 24 substitute custodian for all Counterfeit Merchandise seized, which shall be maintained in a
 25 secure location pending further order of this Court;

1 AND IT IS FURTHER ORDERED that this matter be set for status and a hearing with
2 respect to Plaintiff's execution of this seizure order for January 29, 2024, with Defendants'
3 responsive papers, if any, filed with the Clerk of this Court and served upon the attorneys for
4 Plaintiff by delivering copies to Plaintiff's counsel at the address set forth below, seven (7) days
5 before the hearing. Any reply shall be filed and served by Plaintiff by January 26, 2024.
6 Plaintiff will advise the Court of any additional venues and/or dates for the 2023 Tour in advance
7 of the hearing. The Court will advise whether the hearing will be in person or by teleconference
8 in advance of the hearing.

9 Dated this 25th day of September, 2023.

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13 John H. Chun
14 United States District Judge
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